IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY APPLICATION NO. 35 OF 2006
IN
COMPANY PETITION NO. 12 OF 2006

Putzmeister AG,
Max-Eyth Strasse 10,
D-72631, Atchtal,
Germany. .... Applciant

V/s

Putzmeister India Pvt. Ltd.,
115, Kamat Towers
Patto Plaza, Panaji-Goa,
(India) – 403 001. .... Respondent

Mr. S.K. Kakodkar, Senior Advocate with Mr. P. Rao, Advocate for the Applicant.

Mr. A.N.S. Nadkarni, Advocate for the Respondent.

CORAM : N.A. BRITTO, J.

DATE : 28th SEPTEMBER, 2007

ORDER :

The Petitioner has filed the petition for the winding up of the Respondent-Company on the ground that the Respondent-Company is indebted to the Petitioner in the sum of Rs. 2,03,04,604.00 towards supplies received by the said company, and, has filed the present application directing the Respondent-Company to give a break-up list of the sundry creditors as reflected in the balance-sheet of the Respondent-Company for the year ending 31/03/2005 and 31/03/2006. It may be stated

that the said balance-sheet for the year ending 31/03/2005 discloses liabilities of the Company as against sundry creditors in the sum of Rs. 1,77,54,425.27 and for the year ending 31/03/2006 discloses the liability of Rs. 3,11,95,259.92. The case of the Petitioner is that they have reasons to believe that a major portion of the liability towards sundry creditors corresponds to the dues payable by the Respondent-Company to the Petitioner, qua the supplies made by them and accepted by the Respondent-Company and this position would be cleared if the Respondent-Company is directed to produced the detailed break-up of the said sundry creditors.

2. On behalf of Respondent-Company a preliminary objection was taken that the petition was not maintainable in the absence of a notice having been served at the registered office of the Respondent-Company. By order dated 15/06/2007 it was decided that the said preliminary objection would be decided along with Petitioner's Company Application No. 35 of 2006.

3. The said preliminary objection had got to be disposed off in the light of unreported judgment of this Court dated 15/09/2006 in Company Petition No. 1-N of 2002 in the case of ***Mr. N.N. Valechha V/s. M/s. I.G. Petrochemicals***, wherein this Court has stated thus:

> "There is again preponderance of judicial opinion in support of the proposition that apart from the legal fiction it is open to the Petitioner to make and prove an alternative claim that the Company is unable to pay its debts."

4. The preliminary objection shall therefore stand overruled in the light of the said judgment.

5. Learned Senior Counsel, on behalf of the Petitioner, refers to Rule 6 of the Companies Rules and submits that the provisions of Order 11, Rule 2 have been made applicable to the proceedings before this Court. Referring to Section 211 of the Companies Act, 1956, (Act, for short) learned Senior Counsel contends that the names of debtors of the Company ought to have been reflected on a balance-sheet filed by a Company. Indeed, Sub-section (1) of Section 211 of the Act provides that every balance-sheet of a Company shall give a true and fair view of the state of affairs of the Company as at the end of the financial year and shall, subject to the provisions of this section, be in the form set out in Part I of Schedule VI, or as near thereto as circumstances admit or in such order form as may be approved by the Central Government either generally or in any particular case; and in preparing the balance-sheet due regard shall be had, as far as may be, to the general instructions for preparation of balance-sheet under the headings "Notes" at the end of that Part:

Provided that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity or to any other class of company for which a form of balance-sheet has been specified in or under the Act governing such class of Company. Be that as it may, it is not the case of

the Petitioner that the balance-sheet filed by the Respondent-Company is not in the form set out in Part I of Schedule VI or as near thereto.

6. As per the Respondent-Company the balance-sheets prepared as per the accounting standards and policies cannot be used to ascertain rival claims of the parties, as sought to be done by the Petitioner. Learned Counsel on behalf of the Respondent contends that the Petitioner is on a fishing inquiry and that there is no power under the Act to provide for the information sought by the Petitioner. Learned Counsel further submits that with the view to facilitate obtaining proof for Petitioner's case this Court will not direct the Respondent-Company to provide the information sought. Learned Counsel also contends that it is only the auditors who in terms of Section 227(3) of the Act would be entitled for such information. Learned Counsel has placed reliance on ***Padam Sen V/s. State of Uttar Pradesh (AIR 1961 SC 218)*** and submitted that it is no business of the Court to collect evidence for the party.

7. Learned Senior Counsel has placed reliance on ***Gopal Krishnaji Ketkar V/s. Mohamed Haji Latif and Others (AIR 1968 SC 1413)*** wherein the Apex Court has stated that;

> "Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could

> throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof."

8. Apparently the judgments cited on behalf of the parties are not with reference to Order XI, C.P.C. Suffice it to observe that there is no provision under the Act under which the Petitioners would be entitled to get such information, but at the same time, it must be stated that there is no prohibition either which will preclude this Court from making an order that such information be provided for. Order XI, CPC deals with discovery by interrogatories. The very purpose of Order 11, Rule 2 read with Rule 6 of the Companies Rules is to administer interrogatories to his opposite parties to obtain admissions from him with the object of facilitating proof of his case and also to save the costs which may otherwise be incurred in adducing evidence to prove the necessary facts. This power is not to be confined within narrow technical limits and it is meant to be exercised liberally to enable a party to require information from the opponent for the purpose of maintaining or strengthening his own case or destroying the case of his adversary. If litigation is to be shortened there should be liberal use of that power made and certainly it cannot be disallowed on the ground that the burden is on the party to prove its case or that the party should adopt other means to prove its case. A party is certainly entitled to obtain admissions to support its own case by delivering interrogatories. Viewed thus, there can be no reasonable objection to the Petitioner's application. In the balance-sheet ending for the year 31/03/2006 the liability, in the

directors report, is bound to be shown as disputed, since such a balance-sheet was admittedly filed after the filing of the petition for winding up.

9. Consequently, the Respondent-Company is hereby directed to disclose in terms of Rule 8, Order 11 C.P.C. the names of sundry creditors as reflected in the aforesaid two balance-sheets and the amount of credit shown as against the Petitioner in each the balance-sheets. Whether there is an admitted debt or whether the debt claimed by the Petitioner is bonafidely disputed by the Respondent-Company is a matter which will be required to be gone into at the time of the hearing of the Petition.

10. Application allowed on the above terms.

N.A. BRITTO, J.

NH/-